Supreme Court, U.S.
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92-1125

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

NORTH BY NORTHWEST CIVIC ASSOCIATION, INC.,

Petitioner,

Vs.

CITY OF ATLANTA, et al

Respondents.

PETITION FOR A WRIT OF CERTIORARI

TO SUPREME COURT OF GEORGIA

SUPPLEMENTAL APPENDIX

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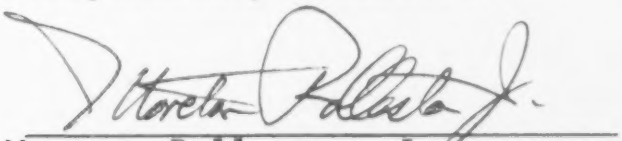
The first and only hearing regarding the original complaint was at a hearing on Motion For Summary Judgment in Fulton Superior Court, Georgia (trial court) on the third

day of December , 1991. The Opinion of the trial court is set forth hereinafter beginning at SA-1 (Supplemental Appendix-1). All appeals were filed within the statutory period of thirty days.

Respectfully submitted,



Moreton Rolleston, Jr.
Attorney for Petitioner

SUPPLEMENTAL APPENDIX

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

CIVIL ACTION FILE NO. D-93210

NORTH BY NORTHWEST CIVIC ASSOCIATION, INC., Plaintiffs

vs.

JOINT CITY-COUNTY BOARD OF TAX ASSESSORS OF CITY OF ATLANTA AND FULTON COUNTY; COUNTY COMMISSIONERS OF FULTON COUNTY, GEORGIA; CITY OF ATLANTA AND COLE-LAYER-TRUMBLE COMPANY, Defendants.

O R D E R

After hearing argument and considering the entire record as well as hearing oral testimony, the court finds on the motions for summary judgment and injunction:

1.

The Plaintiff has standing in a taxpayer suit to test and to challenge expenditure of tax monies; Plaintiff lacks standing to sue a private

contractor for breach of contract or refund of monies because only the governmental entities have such right and power. Plaintiff has standing to challenge the method, procedure and constitutionality of the mass re-appraisal by a private person delegated by contract to perform such governmental function.

2.

The Court finds that the acts of Fulton County Commissioenrs and the City of Atlanta were not ultra vires in entering into the contract with Cole-Layer-Trumble Company (hereinafter referred to as CLT).

3.

The Court finds that any changes in domestication of CLT, its parent company or any related company during

the performance of the contract does not void or make voidable the contract.

4.

The Court finds that the basic design and methodology of CLT as it relates to residential mass reappraisal appears, based on the evidence, to be sound and legal with three (3) exceptions. These three exceptions cause the mass reappraisal to be unconstitutional in violation of due process under Article I, Sec.I, Par.I, and equal protection under Article I, Sec.I, Par.II, of the 1983 Constitution of Georgia. These unconstitutional flaws are remediable and will permit salvage of the re-appraisal with some additional rework and changes.

5.

Employment of untrained and under-

trained "listers", "reviewers" and appraisers," coupled with inadequate training and supervision have caused substantial error in data to be introduced into the mass reappraisal as to individual residential properties. The design of the mass reappraisal assumed that errors as to individual taxpayers would be corrected through individual appeals. The incident of contested reappraisals resulted in approximately 25,000 informal proceedings between the individual taxpayer and CLT staff and 30,000 demands for arbitration under the unconstitutional procedure. CLT had engaged in substantial prior review and correction to avoid inaccurate or erroneous data. Without an appeal process and with the high potential for error, the

mass reappraisal is arbitrary, capricious and unequal.

6.

Unless and until the General Assembly, by statute, creates an appeal procedure that complies with due process and permits adjustment and correction to assure equal protection, the Defendants are restrained and enjoined from the use of such mass reappraisals and must either use prior appraisals or new appraisals done in coventional manner without use of the mass reappraisal computer program. Subdivided property and new construction which had no appraisals prior to the mass reappraisal conducted by CLT must be appraised using the methodology that existed prior to the mass reappraisal. Once the appropriate statute has been passed and becomes law

by the governor's signature, the tax assessors may send out notices of re-appraisal under the mass reappraisal. All taxpayers shall have until thirty (30) days after the statute becomes effective within which to appeal or to protest any appraisal or reappraisal made for 1991 or 1992, or subsequent years, whether or not they made a protest under the old system of arbitration. The tax assessors must give timely written notice to all taxpayers not only of any reappraisal but also of the new appeal procedure.

7.

As to residential property only, the mass reappraisal created artificial "neighborhoods" which in many cases did not reflect real or existing neighborhoods or had boundaries that

included contiguous areas that in actuality fell into other neighborhoods. "Neighborhoods" within the mass re-appraisal methodology are critical in establishing and defining comparable values bases upon actual sales. Place-ment aribtrarily and capriciously of property into the wrong neighborhood will cause unequal evaluation upward and downward because location is a primary determinant of value either on the market approach or the multiple regression of value factors. The artificial "neighborhoods" created by the County must be evaluated and adjusted by real estate brokers to reflect the real estate market. Those "neighborhoods" which accurately reflect the market or actual neighborhoods will stand as drawn; "neighborhoods" which do not exist in the market or reality,

which are too large or too small or which overlay existing neighborhoods must be adjusted to coincide with generally accepted real estate market or reality as the neighborhood.

8.

To achieve such review and proper placement of residential property in the proper "neighborhood" and to properly define all applicable "neighborhoods" to reflect the market or reality, four panels of at least seven nor more than fifteen (15) real estate brokers per panel, shall be created by the Joint City-County Board of Tax Assessors of the City of Atlanta and Fulton County; the mass reappraisal by CLT has divided Fulton County into four tax zones withing which it subdivided the area into "neighborhoods" by natural or man-made landmarks; for each such

tax zone one panel shall be organized from real estate brokers who have had at least ten (10) years experience selling within such tax zone; a quorum of any panel shall be a majority plus one of the appointed members of such panel; a simple majority vote of those brokers present shall govern any applicable vote. Each panel shall review each "neighborhood" within the tax zone; if a "neighborhood" should in actuality lie in a neighborhood lying in two zones, then such neighborhood should be shifted to the zone with the largest number of residences in the actual neighborhood. The panels shall vote to approve, adjust or redraw "neighborhoods" to accurately reflect real neighborhoods or neighborhoods reflected by the real estate market, whichever configuration most accurately

reflects fair market values. If the panel members cannot agree on what constitutes a neighborhood, they may consult any prior tax plats, zoning maps, neighborhood planning unit subdivisions, street maps and guides, utility maps or designation plats or historical records. The primary purpose of the panel is to accurately locate residential property in the appropriate neighborhood which best reflects market forces to establish the fair market value of such property.

9.

Where an adjustment results in the change of a "neighborhood", only those residential parcels moved into or out of the neighborhood need have a recalculation of five (5) comparable sales prices and the re-evaluation against the cost approach and consideration of

the multiple regression. If all or three-fourths of the residential parcels in a neighborhood do not require recalculation because they were not subject to adjustment to a different "neighborhood", then no recalculation of such parcels shall be necessary. However, if more than a fourth of the residential parcels in a "neighborhood" are adjusted, all the residential parcels shall be recalculated in the readjusted "neighborhood" using the five comparables most applicable to such "neighborhood" and the individual property.

10.

The mass appraisal methodology and computer driven analysis arbitrarily and capriciously reassesses and re-evaluates residential parcels containing in excess of two acres of land because such re-evaluation treats the square footage price of land in excess of two

acres at the same price as developed lots of two acres or less which have street frontage and utilities in place as if such excess land had been developed with streets, gutters, sanitary sewers, storm sewers, water, culverts and other utilities and fails to adjust the valuation for topography, engineering requirements, zoning flood plain, wetlands restrictions, Chattahoochee Development Corridor, utility easements and other governmental restrictions. Such re-evaluation and reappraisals of residential lots in excess of two acres under the mass reappraisal methods of CLT violate equal protection and due process by such procedures and methods. In searching for comparables for such undeveloped portions of residential lots, the computer driven search

can search beyond the "neighborhood" to select undeveloped lot sales which lack true comparability in location or character. The Court permanently restrains and enjoins the use of the mass reappraisal of CLT to more than the two acres immediately surrounding the residence; land in excess of two acres must be individually re-evaluated and reappraised using traditional and standard appraisal methods and procedures, taking into consideration development costs, topography, engineering requirements, zoning, drainage easements, flood plain, wetlands restrictions, Chattahoochee [illegible]velopment Corridor restrictions, utility easements and other governmental restrictions, utility and marketability.

11.

While such re-evaluations and

reassessments of residential lots in excess of two acres is being individually done, the evaluation of the two acres and residence can be separately re-evaluated and reassessed under the mass reappraisal of CLT. When the "neighborhoods" have been reviewed, readjusted and revalued; when the appeal process is in place, and when the residence and two acres of lots exceeding two acres have been separately reappraised by the CLT method, mass reappraisal shall satisfy all statutory and constitutional requirements notwithstanding that all lots of residential land in excess of two acres have not been completely and individually re-evaluated and reappraised by standard and traditional methods. At such time, the tax assessors may reassess land in Fulton County and the City of Atlanta

BEST AVAILA

based upon the mass reappraisal of CLT with such mandated corrections.

12.

The individual re-evaluation and reassessment of residential land in excess of two acres shall proceed expeditiously, using standard and traditional appraisal methods "neighborhood" by "neighborhood" until completed. Until such individual reappraisals can be compelted, prior appraisals shall be used if such reappraisal has not been completed prior to the sub mission of the tax digest to the Revenue Commissioner.

SO ORDERED this 20th day of December, 1991.

/s/ Frank M. Edridge

Frank M. Eldridge, Judge
Fulton Superior Court
Atlanta Judicial Circuit

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